HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1778 of 2002(S/B)
Dalip Singh Kathgyat and others.
Vs
State of Uttaranchal through secretary Deptt. of Education and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 29.04.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1778 of 2002 (S/B)

Dalip Singh Kathayat
And others ……. Petitioners

Vs

State of Uttaranchal through
Secretary Department of
Education, Government
Of Uttaranchal Dehradun
And others. ……. Respondents

And

Writ Petition No. 1128 of 2002 (S/B)

Kishan Singh Negi and
Another ……. Petitioners

Vs

State of Uttaranchal ……. Respondents

And

Writ Petition No. 1122 of 2002 (S/B)

Smt. Sushila Barokoti
And another ……. Petitioners

Vs

State of Uttaranchal ……. Respondents

Counsel for the petitioner Shri Manoj Tiwari.

Standing Counsel for the Respondents.

Dated: 29-4-2004

Hon'ble Rajesh Tandon, J.

Heard Shri Manoj Tiwari Learned counsel for the petitioner and Standing counsel for the respondent.

By the present writ petition the petitioners have prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to sanction the pay scale of Rs.7500-12000 on the post of Sub Deputy Inspector of Schools/Assistant Basic Education Officer and the corresponding higher pay scale to the post of Deputy Basic Education Officer on the term identical to as contained in Government order dated 20-12-2001.

Brief facts giving rise to the present writ petition are that the petitioner No. 1 was initially appointed as Assistant Teacher in Jaagnath Madhyamik Vidyalaya Chaupata on 1-7-74 and then he was promoted as Headmaster Junior High School w.e.f. 1-7-77 and ultimately he was promoted as Sub Deputy Inspector of Schools under 10% quota w.e,f, 6-11-89 and presently he is working in Ramnagar, District Nainital.

Petitioner No. 2 was initially appointed as Assistant Teacher in Government Model School Bhimtal w.e.f. 22-10-1970, subsequently he was promoted as Headmaster of Government Model School Bhimtal w.e.f. 30-5-82 and ultimately he was promoted as Sub Deputy Inspector of School under 10% promotion quota w.e.f. 19-11-1987 and presently he is serving as Assistant Basic Education Officer in Block Syaldey.

Petitioner No.3 was appointed by direct recruitment through Commission on the post of Sub Deputy Inspector of Schools w.e.f. 2-1-89 and now presently she is serving as Sub Deputy Inspector of Schools in Block Bhimtal, District Nainital.

Petitioner No.4 was appointed on the post of Supervisor in Department of Non Formal Education w.e.f. 17-10-1987. In the year 1989, pursuant to Government decision, the post of Supervisor was upgraded, as Project Officer and the Petitioner

No.4 became Project Officer. In the year 2001 all Project Officers serving in the Department of Non Formal Education was absorbed on the post of Sub Deputy Inspector of Schools. Before her absorption, the petitioner No.4 was getting the salary of Rs. 6500-10500. Petitioner No.5 was initially appointed as Assistant Teacher in Junior High School Deshlekh Pithoragary w.e.f. 20-2-1975 and then he was promoted as Headmaster Junior High School w.e.f. 1-10-1982 and then he was promoted as Sub Deputy Inspector of Schools under 10% promotion quota and the petitioner No.6 was appointed on the post of Sub Deputy Inspector of Schools by direct recruitment through Public Service Commission w.e.f. 16-1-1978 and then he was promoted as Deputy Basic Education Officer w.e.f. 14-11-88 and he is presently working in District Nainital.

After time of admission following order was by this court:-

"Heard.

Learned Standing Counsel has submitted that the matter of grant of revised pay scale to the Sub Deputy Inspector is under consideration of the State Govt. Learned Standing Counsel has prayed two months time to take decision in the matter.

Six weeks time is granted to the respondents to take decision in the matter of revised pay scale to Sub Deputy Inspector.

List this case after six weeks."

Nothing was brought to the notice of the court regarding any decision to be taken in pursuance of the interim order dt. 1-7-2003.

The post of Sub Deputy Inspector of Schools initially carried the pay scale of Rs. 120-200 w.e.f. 1945 which was revised w.e.f. 1955 to the level of Rs. 120-300 w.e.f. 1965 to the level of Rs. 150-350 w.e.f. from 1972 to the level of Rs. 325-575 w.e.f. 1-7-1979 to the level of Rs. 540-910 w.e.f. 1-1-86 to the level of Rs. 1400-2300 and w.e.f. 1-1-96 to the level of Rs. 4500-7000 and the Assistant Basic Shiksha Adhikari also carries the same pay scale as that mentioned in the above paragraph.

The petitioner has referred Subordinate Education (Sub Deputy Inspector of Schools Service Rules, 1992). Where the status of the service known as Sub Deputy Inspector of Schools has been defined Rule 2 provides as under:-

"Status of the Service- The Uttar Pradesh Subordinate Education Sub Deputy Inspector of Schools Service is a Subordinate Educational Service Comprising Group 'C' posts."

Para II of the aforesaid rule provides cadre of service to the following effect:-

"Cadre of Service- (1) The strength of the Service and of each category, of posts therein shall be such as may be determined by the Government from time to time.

(2) The strength of the Service and of each category of posts therein shall, until orders varying the same are passed under sub-rule (1), be as given in the Appendix:

Provided that-

(i) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensation; or

(ii) the Governor may create such additional permanent or temporary posts as he may consider proper.

Part III defines Source of Recruitment Rule 5 provides as under:-

Source of Recruitment- Recruitment to the various categories of posts in the Service shall be made the following sources:

(1) 10 percent by direct recruitment through Selection Committee from amongst such head masters/head mistress as have completed ten

years service on their respective posts on the first day of the year of recruitment,

(2) 80 percent by direct recruitment through the Commission.

(3) *10 percent by promotion through the Selection Committee from amongst qualified extension teachers and craft teachers working in C.T. Grade and appointed under Reorientation Scheme on or before April, 11, 1980:*

As will appear from aforesaid rules containing recruitment of 10% by way of Direct Recruitment through Selection Committee from amongst such Head Masters/ Head Mistress as have completed 10 years of service from respective posts. Sub clause 2 of the rule 5 relates to the direct recruitment from the commission. Sub Rule 3 provides a quota of 10% to promotion from the Selection Committee from amongst qualified teachers and craft teachers working in C.T. Grade Reorientation Scheme on or before April 11, 1980.

As will appear from Rule 5 that head masters/head mistress have to be promoted in L.T. Cadre to the extent of 10% for the appointment of Sub Deputy Inspector of Schools. Counsel for the petitioner has submitted that the posts of Head Master of Junior High School initially carried a pay scale of Rs. 75-175 with effect from 1945 but gradually the Selection Grade was given by was of revision by the government on 20-12-2001 and now the pay scale is of Rs. 6500-10500. The chart has been submitted, the same is quoted below:-

As effective from	Pay scale applicable to the post of Sub Deputy Inspector of Schools/Assistant Basic Shiksha Adhikari	Pay scale applicable to the post of Deputy Basic Shiksha Adhikari	Pay scale applicable to the post of Head Master of Jr. High School.
1945	Rs. 120-200	Rs. 200-350	Rs. 75-175
1955	Rs. 120-300	Rs. 250-500	Rs. 100-200
1965	Rs. 250-300	Rs. 250-600	Rs. 100-250

1972	Rs. 325-575	Rs. 450-950	Rs. 240-390
1-7-1979	Rs. 540-910	Rs. 770-1600	Rs. 490-860
1-1-1986	Rs. 1400-2300	Rs. 2000-3500	Rs. 1450-2300
1-1-1996	Rs. 4500-7000	Rs. 6500-10500	Rs. 4625-7000
1-7-2001	Not revised	Not revised	Rs. 6500-10500

Counsel for the petitioner has submitted that the pay scale of the posts of Head Master of Junior High School was recovered by the government order 20-12-2001. The pay scale of Assistant teacher was also revised in C.T. Grade to the extent of Rs. 5500-9000. It has also been remembered that the C.T. Grade has merged in L.T. Grade teachers are getting the promotional pay scale of Rs. 7500-12000.

Counsel for the petitioner has submitted Sub Deputy Inspector of School is also exercising the administrative control over Junior High School and he is also exercising the following administrative function over Headmaster of junior High School. The same are quoted below:-

a. *Transfer within the Block.*
b. *Sanctioning authority for all types of leave subject to a maximum leave of 42 days.*
c. *Preparation and presentation of salary bill.*
d. *Maintenance of Service Book and Character Rolls and anomalies existing therein.*
e. *Panel inspection and regular inspection of teaching/administrative work.*
f. *Preparation of seniority list at the Block Level.*
g. *Preparation and presentation of papers pertaining to pension/Provident Fund/Group Insurance.*
h. *Recommendation of Selection quota/ promotion pay scale.*

i. Initiation of departmental action.

In order to justify the aforesaid administrative functions the petitioners has reffered the G.O. dt. 10th May 1986 to the following;-

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The petitioners have also referred regarding the report of the Bajaj Committee for reconsidering the pay scale as well as the Sub Committee, which was constituted by the State Govt. 17-11-97 for considering the revision of the pay scale of teachers. The petitioners have stated that they have also made their objection for revision of the pay scale but of no avail and as such anomaly has been created by the Govt. by creating a disparity in the pay scale of headmasters and Sub Deputy Inspector of Schools. Counsel for the petitioner has referred paragraph 42 of the writ petition. The same is quoted below:-

<u>Paragraph- 42</u> **"That it may be stated that the successor State of U.P. has also issued G.O. Dated. 20-7-2001 whereby pay scale of Rs. 6500-10500 has been sanctioned to Headmaster of Junior High Schools and they have been sanctioned selection grade of pay in the scale of Rs. 7500-12000. Subsequently anther Government Order dt. 3-9-2001 was issued by Govt. of U.P. Whereby Headmasters Junior High School were sanctioned promotion pay scale of Rs. 8000-13500. The**

Sub Deputy Inspector of Schools despite holding a promotional post were sanctioned scale of Rs. 4500-7000 and thus the said Govt. created a disparity. Ultimately the Association of Sub Deputy Inspector of Schools serving in U.P. filed writ petition NO. 675 of 2002 seeking a direction to the authorities to sanction the pay scale of Rs. 7500-12000 to the post of Sub Deputy Inspector of Schools/Assistant Basic Education Officer and the corresponding higher pay scale to the post of Deputy Basic Education Officer on term identical to as contained in Govt. Order dt.20-7-2001."

Paragraph 42 of the writ petition has not been specifically denied by the state in his Counter Affidavit. In paragraph 18 of the counter Affidavit it has been stated as under:-

"That the contents of paras 42 & 43 of the writ petition, which relate to the Govt. Order dt. 20-7-2001 issued by the State of Uttar Pradesh and also the writ petition NO. 675 of 2002 filed before the Hon'ble Allahabad High Court and the judgment dated.6-5-2002 passed therein are matters of record and need no reply from the answering respondents."

However in paragraph 7 of the Counter Affidavit this fact has been admitted that the pay scales of the teacher including the Headmasters of Junior High School was revised on 1-7-2001. Relevant paragraph to that effect is quoted below;-

Paragraph-7 *"That in reply to the contents of paragraph 16 of the writ petition, it is stated that the pay scales of the teachers including the Headmasters of the Junior High Schools have been revised w.e.f 1-7-2001 keeping in view the recommendations made by the Samata Samiti specifically constituted for the purpose. It may be reiterated that since 1-1-1986 the pay scale of Head master of Junior High School has been higher that the pay scale of Sub-Deputy Inspector. Teachers including Head Master and Sub-Deputy Inspectors and Deputy Inspectors are personals belonging to two different branches and they also discharge distinctly different types to work*

and duties. It may not be out of place to point here that in administrative side of the Education Department Promotion of an incumbent does not necessarily mean enhancement in remuneration etc. For instance the promotional post of D.I.O.S. is the Deputy Director of Education though the two posts carry the same pay scale. It may also not be out of place to state here that the pay scale of Principal of a Grant in Aid Intermediate College is equal to the pay scale of D.I.O.S. So far as the eligibility for appointment as Sub-Deputy Inspector is concerned, against 10% of the vacancies Head Masters/Mistresses of the Junior High Schools are admittedly in the zone of consideration. But at the same time it cannot be disputed that on promotion on the post of the Sub-Deputy Inspector the status of a Head master of Junior High School does not remain the same. This probably has been one of the reasons for non-parity in two scales."

The petitioner has filed a Rejoinder Affidavit and has produced order of Upper Shiksha Nideshak dt. 25-2-2003 by which the recommendation has been made for bringing a pay scale of the petitioner at per with Headmaster. The proposal is described below:-

प्रति उप विद्यालय निरीक्षक/सहायक बेसिक धिक्षा अधिकारी एवं नगर धिक्षा अधिकारी /नगर धिक्षा अधिकारी तृतीय/द्वितीय सहायक नगर धिक्षा अधिकारी का प्रस्तावित साधारण, चयन एव पदोन्नत वेतनमान का प्रस्ताव।

क्र0सं0 पद का नाम	साधारण वेतनमान	चयन वेतनमान	पदोन्नत वेतनमान	वर्तमान वेतनमान र्सिाधारणक्र
1. प्रति उप विद्यालय निरीक्षक /सहायक बेसिक धिक्षा अधिकारी	7500–250–12000	8000–275–13500	10,000–325–15200	4500–7000
2. नगर धिक्षा अधिकारी	7500–250–12000	8000–275–13500	10,000–325–15200	4500–7250
3. नगर धिक्षा अधिकारी र्द्वितीय,तृतीय श्रेणीक्र	6500–200–10500	7500–250–12000	8000–275–13500	4500–7000

4. सहायक नगर धिक्षा अधिकारी र्तृतीय श्रेणीक्र	5500–175–9000	6500–200–10500	7500–250–12000	3050–4590

In reply to the show cause notice, to the respondents have brought to the notice that the Sub Inspector of Junior High School are not covered under the recommendation of the 5th Pay Commission.

As already pointed out that in accordance with the recruitment rule 10% of the quota are being filled up by promotion amongst Headmasters and as such the petitioners cannot be deprived from the revision of their pay scales in accordance with proposed scheme dt. 25-2-2003.

In Uttar Pradeshiya Vidyalaya Nirikshak Sangh Vs. State of U.P. 202(3) AWC 1957. The Division Bench of the Allahabad High Court as held as under:-

Paragraph-9 *" A counter affidavit has been filed by the respondents and we have perused the same. It is stated in paragraph 3 of the Counter affidavit that while the pay scale of teachers was revised by G.O. dated 20-7-2001 no decision was taken with regard to the pay scale of Sub-Deputy Inspector of Schools/ Assistant Basic Shiksha Adhikari and Deputy Basic Shiksha Adhikari. There is no denial that the pay scale of Head Master was earlier lower than that of the petitioners, but now it has become higher. In paragraph 16 of the Counter Affidavit, it is stated that the Director Basic Education has sent this recommendation regarding these anomalies to the State Government."*

Paragraph- 10 *" We have also perused the rejoinder affidavit. It appears that by G.O. dated 20-7-2001, the pay scale of Head Master of the Junior High School and other teachers in Junior High School has been brought at parwith the central Government employees but no corresponding revision was effected in the case of the petitioners. Hence we are satisfied that there is discrimination against the petitioners and anomalies in this regard. The petitioners are in fact supervising the work of Head Masters of Junior High School and they are getting higher pay scale before*

the pay scale of Head Master of the Junior High School was revised on 20-7-2001 the pay scale of the petitioners should have been simultaneously revised. The grievance of the petitioners is, hence fully justified."

Paragraph- 11 *" In view of the above discussion , the writ petition is allowed. A mandamus is issued to the respondents to grant to the Sub-Deputy Inspector/Assistant Basic Shiksha Adhikaries and Deputy Basic Shiksha Adhikaries forthwith the pay scales as prayed for in the petitioner. A further mandamus is issued to the respondent to consider grant to the petitioners of higher pay scales than that of Head Master of Junior High School, since they were enjoying higher pay scale before 20-7-2001."*

In the light of the aforesaid facts and circumstances a writ of mandamus is issued directing the respondents for considering the pay scale of the Sub Deputy Inspector/Assistant Basic Shiksha Adhikari and / Deputy Basic Shiksha Adhikari forthwith in accordance with the proposal dt. 25-2-2003.

The writ petition is allowed. There will be no order as to costs.

Dated:- 29-4-2004 **Rajesh Tandon, J.**

M.K.